

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARLENE JOHANSEN
Plaintiff

v.

UNITED STATES OF AMERICA Civil Action No. 04-11789-RCL
Defendant

v.

NATIONAL CITY MORTGAGE CO.,
And TIMOTHY BURKE,
Counterclaim Defendants

MARLENE JOHANSEN'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION IN
OPPOSITION TO RALPH JOHANSEN'S MOTION FOR STAY PENDING APPEAL

I. Facts.

On August 17, 2004, Marlene Johansen ("Ms. Johansen") filed this action against the United States to quiet title to her primary residence located at 71 Pleasant Street, Stoneham, Massachusetts (the "Property").

On October 18, 2004 the United States filed its Answer and Counterclaims wherein it asserted the federal tax liens against her ex-Husband, Ralph Johansen ("Mr. Johansen") properly attached to the Property.

Mr. Johansen shortly thereafter filed a Petition in Intervention which was opposed by the United States.

On June 2, 2005 U.S. Magistrate Judge Collings, in his Report and Recommendations on Motion to Intervene as a Plaintiff, ("Report and Recommendation") recommended that the Petition be denied.

Mr. Johansen filed his Objection to the Report and Recommendation on June 13, 2005. Ms. Johansen did not file an objection. The United States, alone, filed its Response to Mr. Johansen's Objection to the Report and Recommendation.

On July 22, 2005 the Court issued its Order adopting the Report and Recommendation which denied Mr. Johansen's Petition in Intervention.

Currently before the Court are the United States' and Marlene Johansen's Motions and Cross Motions for Summary Judgment, corresponding Oppositions to same and Marlene Johansen's Motion to Be Allowed to File a Reply Brief (filed on August 19, 2005).

The parties to the proceeding have agreed that there are no material facts in dispute and that each respective Motion for Summary Judgment is properly before the Court. Also, the parties have extensively researched, discussed and analyzed the law governing this proceeding obviating the need for any permissive intervention.

While Ms. Johansen strongly opposes Mr. Johansen's Motion for Stay Pending Appeal, as a matter of fundamental fairness, she does not object to Mr. Johansen's filing an amicus curiae brief. at this time.

II. Argument.

Mr. Johansen's Motion for Stay Pending Appeal should be denied because the property interest in 71 Pleasant Street,

Stoneham, Massachusetts (the "Property") is adequately represented and protected by Ms. Johansen's claim against the United States to quiet title. As such, Mr. Johansen does not face irreparable injury or harm absent the Stay; rather, the Stay will only serve to delay the final disposition of the matter and injure Ms. Johansen by further maintaining the cloud on her title to the Property. The public interest properly lies with Ms. Johansen's property rights and the expeditious resolution of her quiet title action.

Mr. Johansen is not being denied his due process right to challenge the government's allegations against him. The issues and allegations that Mr. Johansen originally sought to address via intervention are not before the Court and/or are adequately represented. Furthermore, Mr. Johansen cannot satisfy the requirements of F.R.C.P. 24(a) "Intervention of Right".

Mr. Johansen lacks standing in this proceeding to quiet title because he does not dispute Ms. Johansen's ownership of the Property. In fact, he has stated that "[he] transferred his interest in the subject property to Plaintiff Marlene Johansen."¹ Thus, the property interests are properly and adequately represented by Ms. Johansen.

¹Petition to Intervene As a Plaintiff By Ralph Johansen, November 30, 2004, p. 2.

The highly contested issues before the Court in the parties' Motions for Summary Judgment are: (1) whether Marlene Johansen is a "purchaser" under 26 U.S.C. §6323 which provides an exemption for transfers of fair value, and in the alternative (2) whether Marlene Johansen is a "judgment lien creditor" under 26 U.S.C. §6323 which defeats the federal tax lien. Neither issue involves an interest relating to the property or transaction which is the subject of the action which is not already adequately represented. Nor would a decision in favor of the United States on either issue change the fact that Mr. Johansen is solely responsible for his outstanding tax liabilities.

III. Conclusion.

Mr. Johansen's Motion for Stay Pending Appeal is properly denied. Mr. Johansen does not demonstrate any interest relating to the property or transaction which is the subject of the action that is not already adequately represented by the existing parties. Mr. Johansen will not be irreparably harmed in the absence of a stay because the issues for which he petitioned to intervene are not before the Court so as to violate his due process rights. A Stay would only serve to harm the interested parties by unnecessary delay, with whom the public interest lies in the expeditious resolution of their property rights.

Marlene Johansen,
By her attorney,

/s/ Timothy J. Burke
Timothy J. Burke
BBO# 543837
Burke & Associates
400 Washington Street
Braintree, MA 02184
(781) 380-0770

Dated: August 19, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2005 I served a true copy of the above document upon each attorney of record via first class mail, postage prepaid to:

Steven Turanchik, Esq.
U.S. Department of Justice
Tax Division
PO Box 55
Ben Franklin Station
Washington, DC 20044

D. Sean McMahon, Esq.
Law Offices of Meilman &
Costa, P.C.
70 Wells Ave., Suite 200
Newton, MA 02459

Richard A. Oetheimer
Goodwin Proctor, LLP
Exchange Place
53 State Street
Boston, MA 02109-2881

/s/ Timothy J. Burke